IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGIINAL CIVIL JURISDICTION

WRIT PETITION NO.2493 OF 1999

Subhedar D. Yad**av**
C/o Lalchand D. Yadav,
residing at Indrajit Yadav ki
chawl, Room No.7, Jijamata Marg,
Pump House, Andheri,
Mumbai - 400 093. ..... Petitioner.

Versus

1. Municipal Commissioner,
   Municipal Corporation of Gr.
   Mumbai, Mahapalika Marg,
   Mumbai 400 001.

2. Education Officer,
   Education Department,
   Municipal Corporation of Gr.
   Mumbai, Mahapalika Marg,
   Mumbai 400 001.

3. Administrative Officer (School)
   K/East Ward, Municipal Corporation
   of Greater Mumbai, Vile Parle(E)
   Mumbai 400 057 ....Respondents.

Mr.C.G.Gavnekar with G.S.Hiranandani for the petitioner.

None for the respondents.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE :3rd October 2005

-ORAL JUDGEMENT (PER V.M.KANADE,J)-

1. By this petition, the petitioner is seeking appropriate writ order or direction directing the

respondents to withdraw the impugned order dated 30/9/1998 and order dated 22.6.1999.

2. Brief facts of the case are as under: The petitioner joined services of Municipal Corporation as Assistant Teacher on 23.7.1990. It was alleged by the respondents that on 30.6.1997 the petitioner removed the pages from the notice book and thereafter on 1.7.97 it was suspected that the petitioner was responsible for stealing the muster book from the office of the said School. On 24.9.1997 the petitioner was called upon to make a statement which was recorded by the respondents. Thereafter, on 26.6.1998 a notice was issued to the petitioner and he was directed to remain present before the Inquiry Officer. Two charges were levelled against the petitioner. Firstly, that the petitioner had removed certain pages from the notice book which was to be circulated in various classes. Secondly, it was alleged that the petitioner was responsible for removing the Muster Roll from the office of the School. After the enquiry was completed and the statement of the petitioner was recorded, thereafter on 3.12.1998 the petitioner received the impugned order which was signed by the Education Officer on 24.9.1998 and yearly increments of

the petitioner were stopped permanently. In the petition it is alleged that the petitioner thereafter had sent various representations and had demanded the statement recorded by the Inquiry Officer as also the inquiry report alongwith all other relevant papers. First letter demanding the aforesaid documents was sent on 28.12.1998 and thereafter three reminders dated 2.1.1999, 27.1.1999 and 10.2.1999 were sent to the Education Officer. Finally on 8.3.1999 copy of enquiry report was supplied to the petitioner. However, other documents were not supplied. The petitioner filed Review Application dated 16.3.99 for reviewing the impugned order. However, his review application was rejected. The appeal was preferred by the petitioner against the said orders. However, the appeal was also dismissed.

3. Grievance of the petitioner is that after preliminary inquiry was conducted by respondent no.2, inquiry report and the other documents on which reliance was placed by the Inquiry Officer was not supplied to him and before giving him any opportunity to make his submission on the said report, the impugned order was passed by respondent no.2. It was alleged that therefore, there was a breach of principles of natural justice. Second grievance of the petitioner is that the

impugned order states that petitioner has partially accepted the charges levelled against him and learned counsel for the petitioner has invited out attention to the statement of the petitioner which was recorded by the Inquiry officer. It is submitted that nowhere in the entire statement the petitioner admitted any of the charges which were levelled against him. Learned counsel for the petitioner further submitted that the Education Officer did not have the jurisdiction or authority to pass impugned order.

4. Though the petition was admitted on 7.2.2000 and respondent was represented by a advocate who waived service of the rule nisi yet till today no affidavit has been filed by the respondent. Inspite of service, none appears on behalf of the respondent.

5. Perusal of statement which is recorded by the Inquiry Officer reveals that the petitioner has not admitted any of the charges which was levelled against him. In fact the petitioner has emphatically denied both the charges which were levelled against him. The impugned order ,therefore, appears to have been passed on the basis that the petitioner has accepted charges levelled against him. This clearly demonstrates non

application of mind on the part of respondent no.2.

6. There is also some substance as regards second submission made by the learned counsel for the petitioner. It appears that after the inquiry was completed on 26.6.1998, petitioner had demanded copy of enquiry report and relevant documents, however, enquiry report was furnished on 8.3.1999. Other relevant documents were not supplied to him and no opportunity was given to the petitioner to make his submissions on the question of punishment. The Education Officer, therefore, in our view has clearly committed a clear breach of the principles of natural justice. It is a well settled principle of law that before awarding any punishment an opportunity should be given to the delinquent after furnishing a copy of the Inquiry Report to make his submission on the proposed punishment. As regards third submission, there is substance in the submission raised by the learned counsel for the petitioner. Rule 25 of the regulations provides that increment shall be ordinarily given as a matter of course, unless it is withheld by the standing committee, the School Committee, Municipal Corporation or any authority to whom powers are delegated by the Municipal Commissioner under the Rule 5. In the present case

admitted position is that the impugned order has been passed by the Education Officer. Though respondents were represented by the learned counsel no material has been brought on record to indicate that Municipal Commissioner had delegated his powers to curtail increments of the petitioner. In absence of this material Education Officer obviously did not have the jurisdiction or the authority to withhold the yearly increments of the petitioner. For the aforesaid reasons in our view, submissions made by the learned advocate for the petitioner will have to be accepted. The impugned order dated 30.9.1998 annexed at Ex.C is the petition and order dated 22.6.99 (Ex.M) are quashed and set aside. The petition is made absolute in above terms. Respondent is further directed to forthwith restore the benefit of yearly increments and any other consequential benefits which the petitioner was entitled.

7. The petition is made absolute in above terms. Certified copy be expedited.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)